

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE GERBER PROBIOTIC SALES  
PRACTICES LITIGATION

Civil Action No.: 12-835 (JLL)

**ORDER**

**LINARES**, District Judge.

This matter comes before the Court by way of a motion to dismiss [CM/ECF No. 93] certain claims in the Fourth Consolidated Amended Complaint (“FAC”) [CM/ECF No. 92] pursuant to Federal Rule of Civil Procedure 12(b)(6) by Gerber Products Company (hereafter “Defendant” or “Gerber”). No oral argument was heard pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth in the Court’s corresponding Opinion dated October 6, 2014,

**IT IS** on this **6th day of October, 2014**,

**ORDERED** that the Defendant’s motion to dismiss the New Jersey Plaintiffs’ NJCFA claim for failure to allege an ascertainable loss is granted. This claim is dismissed **without prejudice**. Plaintiffs may amend their Complaint to correct the pleading deficiencies **on or before November 6th, 2014**; and it is

**ORDERED** that Defendant’s motion to dismiss Plaintiffs claim for lack of Article III standing is **denied**.

**IT IS SO ORDERED.**

/s/Jose L. Linares

Jose L. Linares

United States District Judge